

General Information Letter: Taxpayers seeking to use an alternative apportionment method must file a petition in accordance with regulations.

April 20, 2001

Dear:

This is in response to your letter of March 17, 2001 in which you request a private letter ruling. Department rules require that the Department issue two types of rulings, private letter rulings and general information letters. The Department has adopted rules concerning letter rulings and other information issued by the Department (*2 Ill. Adm. Code 1200*). We would be happy to send you a copy of those rules at your request.

Although you have not requested either type of ruling on behalf of your company, the nature of your questions and the information you provided necessitates that we respond in the form of general information letter. A general information letter, which is designed to provide general information, is not a ruling that is binding on the Department.

In your letter you wrote:

I received a LTR-392 Notice of Proposed Tax Due on February 13, 2001 for the tax years 1998 and 1999. Upon reviewing my tax copies since incorporating in November 1994, I found that the CPA I used for tax preparing used the apportionment figure in 1995, but did not use the apportionment figure in any of the following years. I took it upon myself to amend the tax years 1996, 1997, 1998, 1999 using the apportionment figure.

I then received a LTR-353 Notice of Claim Status on March 12, 2001 indicating that copies of Out-of-state returns are required support for the changes reported. My being ignorant to the fact and also knowing that the CPA in 1995 did not file any Out-of-state returns, I do not have these to support my changes.

I then called your office and talked to Jeanette Ushman explaining my problem, I asked her if I could just amend my 1995 return and not use the apportionment figure and we could disregard the amended 1996, 1997, 1998 and 1999 returns that I sent in February.

Jeanette started doing some research on the laws concerning this apportionment and my type of business and said that the way she read it, I should file using the apportionment, but by figuring the time I spent in Illinois and in the rest of the states.

Just to help you understand my type of business: I incorporated in 1995 in IL as a Trucking Company, at that time I leased 3 tractors and 3 Trailers, in 1996 I went down to 1 Tractor, from Jan. 1997 to present I leased the only tractor to an Illinois Carrier, my only office is in the state of IL, over 80% of the product hauled by my company either originated or delivered in the state of IL, and most of the Brokers and Carriers I do business with are in the state of IL.

The reason for this letter is to ask you to please allow me to amend my 1995 IL-1120 and not use the apportionment figure in any of the years following as long as my business continues the same, which I may add I have no plans to change.

## **DISCUSSION**

The relief you seek can only be granted through the alternative allocation process found in §304(f) of the Illinois Income Tax Act. Section 304(f) states:

If the allocation and apportionment provisions of subsections (a) through (e) do not fairly represent the extent of a person's business activity in this State, the person may petition for, or the Director may require, in respect of all or any part of the person's business activity, if reasonable:

- (1) Separate accounting;
  - (2) The exclusion of any one or more factors;
  - (3) The inclusion of one or more additional factors which will fairly represent the person's business activities in this State; or
  - (4) The employment of any other method to effectuate an equitable allocation and apportionment of the person's business income.
- (g) Cross reference. For allocation of business income by residents, see Section 301(a). (Source: P.A. 87-478; 87-880; 89-379; 89-399, eff. 8-20-95.)
- (h) For tax years ending on or after December 31, 1998, the apportionment factor of persons who apportion their business income to this State under subsection (a) shall be equal to:
- (1) for tax years ending on or after December 31, 1998 and before December 31, 1999, 16 2/3% of the property factor plus 16 2/3% of the payroll factor plus 66 2/3% of the sales factor;
  - (2) for tax years ending on or after December 31, 1999 and before December 31, 2000, 8 1/3% of the property factor plus 8 1/3% of the payroll factor plus 83 1/3% of the sales factor;
  - (3) for tax years ending on or after December 31, 2000, the sales factor.

If, in any tax year ending on or after December 31, 1998 and before December 31, 2000, the denominator of the payroll, property, or sales factor is zero, the apportionment factor computed in paragraph (1) or (2) of this subsection for that year shall be divided by an amount equal to 100% minus the percentage weight given to each factor whose denominator is equal to zero.

As the assessment for tax due has already been made, you must present your petition for alternative allocation as part of an amended return. But first you must pay any deficiency and only then file an amended return that incorporates your request for alternative allocation.

From the information presented in your letter it is not certain which apportionment formula you are required to use. Section 304(d) requires the use of revenue miles (transportation of 1 passenger or 1 net ton of freight the distance of one mile for a consideration) for those providing transportation services. However, if the taxpayer is leasing his equipment to another then this is not the proper formula. Rather, under such circumstances the taxpayer must apportion income based upon the amount of time the asset was used in Illinois and the amount of time the asset was used in other states. Before presenting your §304(f) petition you should first determine which is the proper formula for your company to use when allocating income to Illinois. You state in your letter that at least 20% of the product hauled by your company is done completely in other states. Accordingly, you must allocate income between Illinois and those other states. I am enclosing a copy of section 100.3390 of the Illinois Administrative Code that explains the petition for alternative allocation procedure process.

I should state, however, that you must explain in your application why the standard apportionment formula does not reflect reality. A §304(f) petition will only be granted if the taxpayer can show that the standard formula distorts his true economic position and that the proposed formula better represents his true position. Merely because the alternative allocation formula results in tax savings does not justify the use of the alternative formula—it must better reflect the true economic position of the taxpayer. If you would like further advice concerning a §304(f) application you may write to legal services at the above address or contact the head of the Income tax division Paul Caselton at (217) 524-3951.

As mentioned above, this is merely a general information letter and not a statement of policy and is not binding upon the Department. I hope that this has been helpful to you. The Department maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have additional questions please feel free to contact me at the above address.

Very Truly Yours,

Charles E. Matoesian  
Associate Counsel - Income Tax Division